

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4 In Re:) Docket No. 3:17-BK-3283 (LTS)
5)
6) PROMESA Title III
7 The Financial Oversight and)
8 Management Board for)
9 Puerto Rico,) (Jointly Administered)
10)
11 *as representative of*)
12)
13 The Commonwealth of)
14 Puerto Rico, *et al.*) June 29, 2022
15)
16 Debtors,)
17)
18)
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12 In Re:) Docket No. 3:17-BK-4780 (LTS)
13)
14) PROMESA Title III
15 The Financial Oversight and)
16 Management Board for)
17 Puerto Rico,) (Jointly Administered)
18)
19 *as representative of*)
20)
21 The Puerto Rico Electric)
22 Power Authority,)
23)
24 Debtors,)
25)

20 OMNIBUS HEARING
21 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
22 UNITED STATES DISTRICT COURT JUDGE
23 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
24 UNITED STATES DISTRICT COURT JUDGE
25)

1 APPEARANCES:

2 ALL PARTIES APPEARING VIA VIDEOCONFERENCE OR TELEPHONICALLY

3 For The Commonwealth

4 of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV

Mr. Brian S. Rosen, PHV

5 Ms. Laura Stafford, PHV

Mr. Scott P. Cooper, PHV

6 Mr. Daniel Desatnik, PHV

7 For Puerto Rico Fiscal

8 Agency and Financial

Advisory Authority: Ms. Carolina Velaz-Rivero, Esq.

9 For Isla Del Rio, Inc.: Mr. Eduardo Capdevila, Esq.

10 For PV Properties: Mr. Fernando E. Agrait, Esq.

11 For Cobra Acquisitions,
12 LLC:

Mr. Abid Qureshi, PHV

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25 Proceedings recorded by stenography. Transcript produced by
CAT.

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| 1 | I N D E X | |
| 2 | WITNESSES: | PAGE |
| 3 | None. | |
| 4 | | |
| 5 | EXHIBITS: | |
| 6 | None. | |
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1 San Juan, Puerto Rico

2 June 29, 2022

3 At or about 9:34 AM

4 * * *

5 THE COURT: Good morning. This is Judge Swain
6 speaking.

7 Ms. Tacoronte, would you please call the case?

8 COURTROOM DEPUTY: Good morning, Your Honor.

9 *In re: The Financial* -- I'm sorry, Your Honor. The
10 United States District Court for the District of Puerto Rico
11 is now in session.

12 THE COURT: Your sound is fading out a little bit,
13 Ms. Tacoronte.

14 COURTROOM DEPUTY: I'm sorry, Your Honor. Is this
15 better?

16 THE COURT: Yes, it is, much better. Thank you.

17 COURTROOM DEPUTY: Okay. The United States District
18 Court for the District of Puerto Rico is now in session. The
19 Honorable Laura Taylor Swain presiding. Also sitting,
20 Honorable Magistrate Judge Judith Dein. God save the United
21 States of America and this Honorable Court.

22 *In re: The Financial Oversight and Management Board*
23 *for Puerto Rico, as representative of the Commonwealth of*
24 *Puerto Rico, et al.,* Case No. 2017-BK-3283, and *In re: The*
25 *Financial Oversight and Management Board for Puerto Rico as*

1 *representative of the Puerto Rico Electric Power Authority,*
2 Case No. 2017-BK-4780, for Omnibus Hearing.

3 THE COURT: Thank you.

4 Buenos dias. Counsel who are participating by Zoom,
5 please turn your cameras on for these introductory remarks and
6 instructions, but keep your microphones muted.

7 Welcome, counsel, parties in interest, and members of
8 the public, and press. To ensure the orderly operation of
9 today's virtual hearing once we turn to our agenda items, all
10 parties appearing by Zoom must mute their microphones when
11 they're not speaking, and turn off their video cameras if they
12 are not directly involved in the presentation or argument.
13 When you need to speak, you must turn your camera on and
14 unmute your microphone on the Zoom screen.

15 I remind everyone that consistent with court and
16 Judicial Conference policies and the orders that have been
17 issued, no recording or retransmission of the hearing is
18 permitted by anyone, including but not limited to the parties,
19 members of the public, and members of the press. Violations
20 of this rule may be punished with sanctions.

21 I will be calling on each speaker during the
22 proceeding. When I do, please turn your camera on, unmute
23 yourself, and identify yourself by name for clarity of the
24 record. After the speakers listed on the agenda for each of
25 today's matters have spoken, I may permit other parties in

1 interest to address briefly any issues raised during the
2 presentations that require further remarks. If you want to be
3 heard under these circumstances, please use the "raise hand"
4 feature of Zoom at the appropriate time, and that can be
5 accessed by selecting the reactions icon in the tool bar
6 located at the bottom of your Zoom screen. I'll then call on
7 the speakers one by one. If you've raised your hand, when
8 you're finished, please use the "lower hand" feature in that
9 reactions tool bar.

10 Please don't interrupt each other or me during the
11 hearing. If we interrupt each other, it's difficult to create
12 an accurate transcript. But having said that, and as usual, I
13 apologize in advance for breaking this rule as I may interrupt
14 if I have questions or if you go beyond your allotted time.
15 If anyone has difficulty hearing me or another participant at
16 any time, please use the "raise hand" feature immediately.

17 The agenda, which was filed as Docket Entry No. 21368
18 in Case No. 17-3283 is available to the public at no cost on
19 Prime Clerk for those who are interested. Although Prime
20 Clerk is now known as Kroll Restructuring Administration, the
21 Prime Clerk website addresses and telephone numbers are still
22 operational.

23 I encourage each speaker to keep track of his or her
24 own time. The Court will also be keeping track of the time,
25 and will alert each speaker when there are two minutes

1 remaining with one buzz, and, when time is up, with two
2 buzzes. If you're speaking for three minutes or less, you'll
3 only hear the final two buzzes. Here's an example of the buzz
4 sound.

5 I think our buzzer extraordinaire needs to unmute.

6 (Sound played.)

7 THE COURT: That's very faint. Can you hold that any
8 closer to your microphone?

9 (Sound played.)

10 THE COURT: It's still very faint, so I will listen
11 carefully for it, and, counsel, as I said, please keep track
12 of your own time. I will also make an effort to keep track of
13 the time.

14 This morning we will proceed until 12:50. In the
15 unlikely event that we need to resume for the afternoon, we
16 will resume from 2:10 to 5:00 PM. If we need to take a break,
17 I will announce that, and the telephone listen-in-only
18 participants who are on the AT&T line should keep that line
19 open and not hang the phone up during the break.

20 Please turn your cameras off now, and turn your
21 camera back on when we reach your agenda item or if I call on
22 you.

23 The first agenda item is, as usual, status reports
24 from the Oversight Board and AAFAF. As requested in the
25 Procedures Order, these reports have been made in writing in

1 advance of this virtual hearing, and are available on the
2 public docket at Docket Entry Nos. 21376 and 21377 in Case No.
3 17-3283, respectively. I thank the Oversight Board and AAFAF
4 for the care and detail reflected in their reports, which, as
5 always, are informative and cover important matters.

6 I'll first call on counsel for the Oversight Board
7 for any comments in addition to the written report.

8 MR. BIENENSTOCK: Thank you, Judge Swain. Martin
9 Bienenstock of Proskauer Rose, LLP, for the Oversight Board.
10 The Board doesn't have additional comments this morning, Your
11 Honor.

12 THE COURT: Thank you, and good morning,
13 Mr. Bienenstock. I do have one question for you. Your report
14 indicates that the timetable for the PFC Title VI has shifted
15 because of a disagreement about certain elements, and so my
16 question for you is whether and to what extent there is a new
17 timetable, and whether there is active engagement in an effort
18 to resolve that dispute?

19 MR. BIENENSTOCK: Your Honor, I see my partner,
20 Mr. Rosen, has opened his video, and if it's okay, I will
21 defer to Mr. Rosen to answer that.

22 THE COURT: Certainly.

23 Good morning, Mr. Rosen.

24 MR. ROSEN: Good morning, Your Honor. Thank you very
25 much. Brian Rosen, Proskauer Rose, on behalf of the Oversight

1 Board.

2 Yes, Your Honor. We had indicated in our prior
3 status report that we thought that we would be able to file
4 the qualifying modification by June 17. One component of that
5 understanding was the issuance of certain additional bonds,
6 excuse me, in connection with DRA. As reflected in this
7 status report, Your Honor, there is an ongoing discussion
8 among AAFAF, actually, the Oversight Board as well, the DRA
9 Collateral Monitor, as well as the U.S. Trus -- excuse me, the
10 U.S. Bank Trustee, on behalf of certain noteholders,
11 concerning the amount of those bonds that will be issued.

12 We thought that there was an understanding way back
13 in November, Your Honor, when the understanding was announced
14 by counsel for U.S. Bank. However, it continues. There is
15 active engagement among the parties, although I cannot tell
16 you a specific timetable at this point in time. The parties
17 are still quite far apart, and we're still trying to engage
18 all in the discussions to see if an agreement can be reached,
19 but nothing at this time.

20 THE COURT: All right. Let's see. Our next Omni and
21 next regular status report is not until August, and so do you
22 expect to be sufficiently engaged that you would be in a
23 position to file a status report that would be informative and
24 useful by August 1st?

25 MR. ROSEN: Your Honor, I think we will certainly

1 have an update by that point in time that we could report back
2 to the Court as to the progress that has been made, yes.

3 THE COURT: Very well then. I am directing you to
4 file a status report on PFC by August 1st. Thank you very
5 much.

6 MR. ROSEN: Your Honor, if I could take one more
7 second to update the Court on one item?

8 THE COURT: Yes.

9 MR. ROSEN: There was an EMMA filing with respect to
10 this, but I would like to let the Court know about this as
11 well. In connection with the Commonwealth Plan, Your Honor,
12 there was something that was referred to as distribution
13 conditions, with respect to the distribution of certain monies
14 and CVI for HTA holders, and that would be pursuant to the
15 Commonwealth Plan.

16 At the time of the effective date, Your Honor, the
17 distribution conditions had not been satisfied. We're happy
18 to report that the -- those conditions have been satisfied
19 now. And, Your Honor, specifically, what they were was the
20 documentation of the HTA Plan, which, as you know, is on file,
21 a draft confirmation order, which the parties agreed to at
22 this point in form, as well as the terms of a new HTA bond
23 indenture.

24 With that being concluded, Your Honor, we have filed
25 this EMMA notice with AAFAF to reflect that, and distributions

1 will be made in accordance with the terms of the HTA-CCDA Plan
2 Support Agreement. That will provide considerable
3 distributions to holders of HTA bonds, Your Honor.

4 THE COURT: Thank you.

5 MR. ROSEN: You're welcome, Your Honor.

6 THE COURT: I have no further questions for the
7 Oversight Board.

8 Does anyone else have any questions or comments in
9 relation to the Oversight Board report? If so, please raise
10 your hand.

11 I see no hands raised, and so I'll call on counsel
12 for AAFAF for any comments in addition to the report.

13 MS. VELAZ-RIVERO: Good morning, Your Honor.
14 Carolina Velaz-Rivero from Marini Pietrantoni Muniz on behalf
15 of AAFAF.

16 THE COURT: Good morning.

17 MS. VELAZ-RIVERO: Good morning. We don't have any
18 additional comments to what we included in the report.

19 THE COURT: Thank you.

20 Are there any further comments or questions in
21 connection with AAFAF's report? If so, please raise your
22 hand.

23 I see no further hands raised, so thank you very
24 much, Ms. Velaz-Rivero.

25 We will now go on to the next agenda item in Section

1 II of the agenda, which is contested matters. The first such
2 matter is the 458th Omnibus Objection to claims, and I have
3 the Oversight Board as the sole speaker with respect to that
4 objection for five minutes.

5 MS. STAFFORD: Yes. Thank you, Your Honor. This is
6 Laura Stafford of Proskauer Rose on behalf of the Oversight
7 Board.

8 As Your Honor mentioned, the first contested matter
9 or contested Omnibus Claim Objection is the 458th Omnibus
10 Claim Objection, which was filed at ECF No. 20789, and seeks
11 to reclassify proofs of claim that incorrectly or improperly
12 assert entitlement to priority or secured status.

13 Only one response to this objection was timely filed,
14 and it was filed by two entities related to Ferrovia Agroman,
15 Ferrovia Agroman, LLC, and Ferrovia Agroman, SA. It
16 addresses Proof of Claim Nos. 24230 and 17738, and was filed
17 at ECF No. 21159. Each of these claims assert liabilities
18 associated with construction projects initiated by HTA, and
19 claim to be secured under budget of federal funds.

20 I'm pleased to report that we conferred with counsel
21 for Ferrovia Agroman -- for both Ferrovia Agroman entities
22 with respect to these proofs of claim, and the parties have
23 reached agreement with respect to the results of this Omnibus
24 Objection. We've agreed that the Ferrovia entities do not
25 oppose the relief requested as to either proof of claim, which

1 would be reclassified in these proofs of claim as general
2 unsecured claims in their entirety. Ferrovia reserves its
3 rights to amend its claims, and the debtors reserve their
4 rights to object to the claims on any other grounds
5 whatsoever. And for that reason, Your Honor, we'd request the
6 Court sustain the 458th Omnibus Objection, and disallow -- I
7 apologize, reclassify the Ferrovia Agroman claims,
8 notwithstanding the response.

9 THE COURT: Thank you.

10 Having reviewed the submission and heard the remarks
11 of counsel this morning regarding the agreement, the Court
12 rules as follows: The 458th Omnibus Objection is sustained as
13 to Proof of Claim No. 24320 filed by Ferrovia Agroman, LLC,
14 against the Puerto Rico Highways and Transportation Authority,
15 and Proof of Claim No. 17738 filed by Ferrovia Agroman, SA,
16 against the Puerto Rico Highways and Transportation Authority.
17 The portions of those claims that are currently classified as
18 secured are reclassified as general unsecured claims. The
19 claimant has failed to identify any prima facie factual or
20 legal basis supporting the assertion that the claims are
21 secured.

22 I ask that counsel for the Oversight Board submit a
23 comprehensive proposed order resolving all matters raised in
24 the 458th Omnibus Objection.

25 MS. STAFFORD: We will do so, Your Honor. Thank you.

1 THE COURT: Thank you, Ms. Stafford.

2 The next contested matter is the 468th Omnibus
3 Objection to claims. That is Docket Entry No. 20799 in Case
4 No. 17-3283. I have as the first speaker on this objection
5 the Oversight Board for three minutes, followed by counsel for
6 Isla Del Rio, Inc., for five minutes, and then with a reply.

7 So, Ms. Stafford.

8 MS. STAFFORD: Thank you very much, Your Honor.

9 This 468th Omnibus Objection seeks to disallow in
10 their entirety certain proofs of claim that were subsequently
11 amended and superseded by additional proofs of claim filed by
12 the claimant -- as subsequently filed by the claimant. Only
13 one response to this objection was timely received as well,
14 and it was filed by Isla Del Rio with respect to Proof of
15 Claim No. 11464 at ECF No. 21296.

16 Isla filed an initial proof of claim, Proof of Claim
17 No. 11464, on May 8th, 2018, asserting liabilities associated
18 with pending litigations between PREPA and Isla. Isla then
19 filed a second proof of claim on March 10th of 2022, which was
20 docketed by Kroll as Proof of Claim No. 179740. That second
21 proof of claim purports to amend the first proof of claim, and
22 asserts the same pending litigations between PREPA and Isla,
23 but with a higher claim amount, and with the addition of
24 additional supporting documentation relating to evaluation
25 reports submitted in connection with the litigations.

1 Isla's response acknowledges that the objection is
2 correct, and that Proof of Claim No. 179740 was intended to
3 amend Proof of Claim No. 11464. Because Isla does not dispute
4 that Proof of Claim No. 179740 amends Proof of Claim No.
5 11464, PREPA requests the Court grant the objection and
6 disallow Proof of Claim No. 11464. Isla will not be
7 prejudiced by this, because it will retain Proof of Claim No.
8 17974 against PREPA, which asserts the same litigation at an
9 increased amount.

10 Thank you, Your Honor.

11 THE COURT: Thank you. Just a question. Is the
12 second one Claim No. 179740 or 17974?

13 MS. STAFFORD: I apologize, Your Honor. 179740.

14 THE COURT: Thank you.

15 Does counsel for Isla Del Rio wish to be heard?

16 MR. CAPDEVILA-DIAZ: Good morning, Your Honor. For
17 the record, Eduardo Capdevila on behalf of Isla Del Rio.

18 What Counsel Stafford just said is correct. My
19 client accidentally -- he filed a duplicate claim, instead of
20 amending it. To that end, while we apologize to the Court and
21 the Board for the mistake, I just want to add that the stay
22 was lifted to liquidate this claim to judgment, and as soon as
23 it is reduced to judgment in state court, as allowed by this
24 Court on Docket 3795, our client will amend the claim,
25 correctly this time may I add.

1 THE COURT: Thank you, Mr. Capdevila.

2 Ms. Stafford, any further comments?

3 MS. STAFFORD: No, Your Honor.

4 THE COURT: Thank you.

5 MR. CAPDEVILA-DIAZ: Your Honor.

6 THE COURT: Mr. Capdevila, yes.

7 MR. CAPDEVILA-DIAZ: Your Honor, yes. That's the
8 only matter for my client. May I be excused from the hearing?

9 THE COURT: Let me just rule, and then you can be
10 excused.

11 MR. CAPDEVILA-DIAZ: Okay.

12 THE COURT: So this is my ruling: The 468th Omnibus
13 Objection is sustained as to Proof of Claim No. 14464 filed by
14 Isla Del Rio, Inc., against the Puerto Rico Electric Power
15 Authority. The claim shall be disallowed in its entirety,
16 because it has been amended and superseded by Proof of Claim
17 No. 179740, also filed against PREPA, which is recognized as
18 an active claim to which no objection is currently pending.

19 The debtor is directed to submit a comprehensive
20 proposed order resolving all matters raised in the 468th
21 Omnibus Objection. That concludes my ruling. Thank you,
22 Counsel.

23 Mr. Capdevila, you are excused. Thank you.

24 MS. STAFFORD: Thank you, Your Honor.

25 THE COURT: The next matter on today's agenda is

1 | contested matter no. 3, which is the Cobra Lift Stay of
2 | Litigation of Administrative Expense Claim Motion. I have
3 | speaking first for eight minutes Mr. Qureshi for Cobra.

4 | Good morning, Mr. Qureshi.

5 | MR. QURESHI: Good morning, Your Honor.

6 | THE COURT: Good morning.

7 | MR. QURESHI: Your Honor, for the record, Abid
8 | Qureshi of Akin Gump Strauss Hauer & Feld on behalf of Cobra.
9 | May I proceed?

10 | THE COURT: Yes, you may.

11 | MR. QURESHI: Thank you, Your Honor.

12 | Your Honor, we are back yet again in an attempt to
13 | lift a stay that has now been in place for almost three years.
14 | Your Honor, before I get into the factual details to explain
15 | why the interests of justice now demand that that stay be
16 | lifted, I want to start with revisiting the legal standard,
17 | and, in particular, Your Honor, with the words of the Supreme
18 | Court in the *Landis* decision, which we cite in our papers. In
19 | that case, the Court said that, in exercising its discretion
20 | to impose a stay, a court must, quote, weigh competing
21 | interests and maintain an even balance.

22 | Additionally, Your Honor, and very relevant for
23 | today's purposes, the Supreme Court in that same ruling
24 | cautioned against what it termed an immoderate stay without
25 | reasonable limits, and it instructed that once those limits

1 have been reached, quote, the fetters should fall off. And
2 that, Your Honor, respectfully, is where we are today.

3 There is no further justification for the stay, so
4 let's look at what the justifications have, in fact, been.
5 Just to remind Your Honor of the timeline, Cobra completed its
6 restoration work in March of 2019. The last payment it
7 received was in May of 2019. In September of 2019, Cobra's
8 former president, along with two FEMA officials, was indicted.
9 That same month, Cobra filed its administrative expense claim.

10 Now, when the government parties first moved to stay
11 the admin claims motion, they looked for what they call the
12 limited stay, and they pointed to the criminal indictment.
13 What they said was that PREPA might have been fraudulently
14 induced to enter into the contract. They further said that
15 PREPA might have a, quote, unquote, complete defense to
16 Cobra's claim, and even that they, PREPA, may have claims
17 against Cobra for disgorgement or damages. They argued that
18 discovery duplicative with the criminal proceeding would be
19 unnecessary, and they argued that whether the contracts, the
20 Cobra contracts were procured or effected by bribery or fraud
21 would be relevant to their obligation to pay.

22 Now, when Your Honor granted that motion in October
23 of '19, Your Honor stated that significant factual, legal
24 questions that could bear upon the motion would likely be
25 addressed in the criminal matter. Your Honor also noted that

1 the criminal indictment related to the same contracts that
2 were at issue in the administrative claims motion.

3 So, Your Honor, fast forward six months from that
4 initial stay, and Cobra came back before this Court to seek
5 limited relief, which was payment on undisputed taxes that
6 Cobra paid to the Commonwealth, and for which it has a
7 contractual reimbursement right. That motion, too, was
8 denied. And again, Your Honor, the government parties in
9 opposing it pointed to the criminal proceedings, and they said
10 that if the allegations in the Indictment were proven at
11 trial, it might be a complete or a partial defense to Cobra.

12 Fast forward once again, Your Honor, to August of
13 2021, and we again moved to lift the stay. And if -- this
14 time the justification had been further delay in that criminal
15 trial, and, again, it was the criminal trial that was -- that
16 was pointed to. And Your Honor, in denying that motion, ruled
17 that there were not sufficient changes that warranted lifting
18 the stay.

19 Well, now, Your Honor, we believe that there have
20 been. The criminal matter is over. Plea agreements have been
21 entered. The only step that remains in the criminal matter,
22 Your Honor, is a sentencing hearing, which is scheduled to
23 occur on August the 17th.

24 In the Plea Agreement that was filed with and
25 accepted by the Court, Your Honor, there is a stipulation of

1 facts, and we filed that stipulation and that plea agreement
2 as an exhibit to our motion. And that establishes, Your
3 Honor, certain uncontroverted and important facts.

4 First of all, Mr. Ellison, the former Cobra president
5 that was indicted, engaged in conduct that was entirely
6 unrelated to the two contracts that are at issue in the admin
7 claims motion. Instead, his conduct related to a contract
8 that Cobra was never awarded, and work that Cobra never
9 performed.

10 Now, despite PREPA's wishes that he was convicted of
11 bribery, which they state repeatedly in their opposition, he
12 was not. In fact, Your Honor, the bribery count was dismissed
13 as part of the Plea Agreement. What he plead guilty to was a
14 gratuity, which consisted of approximately \$8,000 in hotel,
15 airfare, and security expenses that he paid on behalf of a
16 FEMA official. That's it, Your Honor.

17 So we submit that that criminal matter is now
18 entirely irrelevant to whether Cobra has an allowed
19 administrative claim or not. If PREPA wishes to argue, Your
20 Honor, that it is relevant, they are free to do so. There is
21 nothing about a lifting of the stay that takes away from PREPA
22 the ability to argue whatever it wishes with respect to that
23 criminal plea agreement, but, Your Honor, as the First Circuit
24 has made clear, the government parties do bear a heavy burden
25 to demonstrate that there is a clear case of hardship that

1 they would suffer absent the stay, and they can't do that.

2 So moving on to the second justification that to
3 varying degrees we have heard over time, that is, FEMA's
4 ongoing contract review, and with respect to that, Your Honor,
5 first, it was PREPA and not FEMA --

6 (Sound played.)

7 MR. QURESHI: -- that agreed to the terms of the
8 contract. They did so after multiple levels of review, and of
9 course with the benefit of legal advice.

10 Your Honor, Cobra does not have standing before FEMA.
11 It's not part of the FEMA review process. The contracts that
12 are at issue in the admin claims motion, they raise FEMA, Your
13 Honor, in only one respect, and that is that PREPA could be
14 relieved of its obligation to pay only if PREPA fails to
15 receive federal funding due to Cobra's, quote, unquote, sole
16 fault. That's not even alleged here, Your Honor.

17 So PREPA says that the outcome of the FEMA review, it
18 might give to PREPA a material defense to the administrative
19 claims motion, and they variously assert that FEMA will issue
20 its determinations with respect to the second contract in one
21 case, quote, unquote, soon, and in another case, by the end of
22 the year. We have history to guide us with respect to those
23 deadlines, Your Honor. And so --

24 THE COURT: Mr. Qureshi.

25 MR. QURESHI: Yes.

1 THE COURT: I'd like to just interrupt you now.

2 MR. QURESHI: Please.

3 THE COURT: As to the FEMA review of the first
4 contract, it seems to me from reading the submissions that the
5 Oversight Board is no longer raising the sort of granular, too
6 many hours, not enough people on site, those sort of
7 objections that it had said would need to be the subject of
8 extensive discovery and litigation, and the Oversight Board
9 seems to be accepting the claims, or at least the
10 quantification of the claims as -- to the extent they have
11 been approved by FEMA. At this point, there is 22 million
12 that are still in dispute that I understand has to do with
13 taxes. And there's a mechanism for working on it, but it does
14 seem to me that progress was made, and litigation of a lot of
15 details was avoided by letting FEMA take the first pass
16 through the first contract.

17 Is that understanding unfounded?

18 MR. QURESHI: It is not unfounded, Your Honor, but
19 there is one very material thing that Your Honor left out, and
20 that is that Cobra has already been paid with respect to the
21 first contract. What is at issue is almost entirely amounts
22 owing with respect to the second contract, and also with
23 respect to interest that continues to accrue.

24 So while it is correct, Your Honor, that of course
25 PREPA would have the ability to object to amounts that it had

1 | previously paid with respect to the first contract, and PREPA
2 | appears with respect to the first contract to not be taking
3 | that position, in light of FEMA's review, it is really the
4 | second contract that is the higher priority item for Cobra,
5 | Your Honor, for the simple and obvious reason that we have not
6 | been paid on that contract.

7 | THE COURT: Is there any reason sitting here to think
8 | that PREPA would not back off the technical objections to
9 | amounts approved by FEMA, and that FEMA, in fact, has approved
10 | substantial amounts for related work under the first
11 | contract?

12 | MR. QURESHI: So, Your Honor, my understanding is
13 | that PREPA has assured us, albeit I don't believe in a
14 | pleading, but my understanding is that PREPA has assured us
15 | that whatever amounts PREPA actually receives from FEMA, on
16 | account of the work that Cobra has performed, whether with
17 | respect to the first or the second contract, PREPA intends to
18 | pay those amounts over to Cobra. So that is certainly the
19 | understanding.

20 | Your Honor, the diff -- and additionally, Your Honor
21 | could well be correct, and I would certainly hope that it
22 | would be the case, that if, in fact, on whatever timeline FEMA
23 | is operating under FEMA ultimately approves the invoices that
24 | are the subject of the second contract, and ultimately
25 | releases those funds to PREPA, that PREPA will, in fact, turn

1 that money over to Cobra to satisfy the claim. That is
2 certainly our expectation.

3 The reason, Your Honor, that we continue to implore
4 this Court to lift the stay is that Cobra is -- or PREPA, I
5 should say, has no contractual entitlement to defer dealing
6 with Cobra until FEMA has finished its process. Remember that
7 the way this works under the --

8 (Sound played.)

9 MR. QURESHI: -- first contract, Your Honor, is that
10 Cobra performed the work, Cobra submitted invoices, PREPA paid
11 those invoices, and then, after the fact, PREPA sought
12 reimbursement from FEMA. And then PREPA stopped paying those
13 invoices.

14 Now, they say that that was because FEMA said, as a
15 result of the criminal matter, it was no longer going to
16 reimburse it, although there's a timing disconnect in that
17 regard, but fundamentally, Your Honor, the case remains that
18 the basis of the administrative claim that Cobra has filed is
19 its contract with PREPA.

20 The legal standard that Your Honor must determine, in
21 terms of whether that is an allowed administrative claim, has
22 nothing whatsoever to do with FEMA and whatever process FEMA
23 is engaging in. If PREPA wants to point to a FEMA
24 disallowance and independently try to establish that as a
25 basis to disallow a portion of the administrative claim, they

1 are allowed to do so, but, Your Honor, what Cobra did not
2 bargain for and what PREPA did not get contractual rights with
3 respect to is to bring FEMA into this process, and to put on
4 PREPA -- I apologize, Your Honor, to put on Cobra the entire
5 risk with respect to both the timing and the outcome of the
6 FEMA process.

7 And we know --

8 THE COURT: Well, Mr. --

9 MR. QURESHI: Sorry.

10 THE COURT: Sorry. Mr. Qureshi, I think I do
11 understand your point with respect to the contractual
12 relationships and the role of FEMA, as well as the genuine
13 I'll call it disadvantage to which your client has been put by
14 these delays. This litigation stay, however, is imposed and
15 these issues exist within the context of a Title III
16 proceeding in which there remains an automatic stay.

17 There is Section 305 of PROMESA, which prevents the
18 Court from ordering the government entity to make a payment
19 without the consent of the Oversight Board, and the provisions
20 with respect to payment of administrative expenses are tied to
21 plan confirmation. So while in the ordinary course, with a
22 litigation stay, as you say, there is a weighing of
23 disadvantage to both parties with respect to the delay of
24 progress toward the end goal of the litigation, and there
25 remains that sort of weighing in the determination, on this

1 stay here, we have the practical situation that PREPA is not,
2 in the Title III context, required to make the payment to your
3 client until there is a confirmation proceeding to the extent
4 it's going to be paid as an administrative claim.

5 So here PREPA raises an efficiency point of view that
6 seems to have played out in connection with the first
7 contract, which is that PREPA is certainly saved time and
8 transaction costs of litigating contract-based objections
9 that may well go away if PREPA's comfortable that it's going
10 to be paid by FEMA, and PREPA has legal protection from having
11 to front the money before confirmation. So in that context,
12 what is there to be gained that would benefit the debtor,
13 PREPA, quite frankly, in litigating the granular contract
14 objections before FEMA makes its evaluation?

15 MR. QURESHI: So a couple of things, Your Honor.
16 First of all, I don't think the primary analysis should be
17 what is the benefit to PREPA. I think, instead, it should be,
18 and the case law requires that it be, what is the prejudice to
19 Cobra. While Your Honor is correct that payment may not be
20 required until the time of confirmation of a plan, Your Honor
21 should not conflate payment with allowability of the claim.
22 Cobra is substantially prejudiced when it does not even have
23 an allowed administrative claim.

24 Given the size of the claim, in excess of 300 million
25 dollars, inclusive of interest that continues to accrue, Your

1 Honor, this has had very real and very severe financial
2 consequences on Cobra. The allowance of the claim, even if
3 payment were not to occur until we get to confirmation, would
4 itself be very significant in relieving some of the harm that
5 Cobra has suffered as a result of the stay.

6 In addition, Your Honor, and this now does come into
7 play in terms of benefit to PREPA, and in fact to all of the
8 constituents involved in these proceedings, given the size of
9 the claim, it will be a litigated issue at confirmation
10 proceedings with respect to the ability, the financial ability
11 of PREPA to satisfy the claim, and, therefore, the feasibility
12 of whatever plan may be proposed.

13 PREPA benefits, and all of the parties in this
14 proceeding benefit from certainty, certainty as to what the
15 allowed amount of that claim is, so everybody knows how much
16 funding PREPA needs to have available in order to satisfy the
17 claim at the time of confirmation.

18 In addition, Your Honor, to the extent that PREPA, if
19 that claim were to be allowed prior to confirmation, pays any
20 portion of it, the interest clock would stop ticking, and the
21 estate would be relieved of the burden of ongoing interest
22 expense.

23 Finally, in responding to Your Honor's question, I
24 would point to the fact -- and, by the way, in the First
25 Circuit's list of seven factors that are relevant in this type

1 of a proceeding, this is one of them. Your Honor, there's a
2 very important public interest at stake here, and that is that
3 the whole point of granting an administrative priority is so
4 that parties like Cobra are willing to step in and provide
5 services to an estate. And let's not forget the circumstances
6 in which that occurred here.

7 There was no power on the island, Your Honor, and
8 Cobra stepped in under extremely difficult circumstances. And
9 we are not talking about Cobra being before the Court merely
10 to seek its profit. We're talking about hundreds of millions
11 of dollars that was paid out by Cobra to employees on account
12 of taxes for workers, for materials, and the like.

13 The policy consideration of making sure that parties
14 in other cases are incentivized to provide a debtor with those
15 types of services under those circumstances is a very
16 important one. If every administrative creditor received the
17 treatment that Cobra has received here, where they are
18 precluded even from seeking allowance of the claim for work,
19 the substance of which is not subject to any serious dispute,
20 Your Honor, those policy considerations would be undermined.
21 And so I would urge the Court to come back to that list of
22 factors that the First Circuit instructs should be considered,
23 because every single one of them weighs in favor of lifting
24 the stay, so that at least we can get to the point where Cobra
25 has an allowed claim.

1 And, Your Honor, the argument that there will be
2 duplicative discovery, these vague notions that FEMA -- that
3 PREPA points to, they need to do more than that to allow the
4 stay to continue, and they haven't done it. The reality is
5 that Cobra, at its own expense, has responded to all of the
6 information requests. We know, although we don't see it, tons
7 of information has been provided to FEMA. That's all
8 information that PREPA has access to.

9 So I doubt very much that extensive discovery is even
10 needed. This is really about PREPA saying they would prefer
11 to sit here and wait for FEMA to issue its ruling, whether
12 that happens in six months, or one year, or two years, and
13 that's just not fair. It's contrary to the considerations
14 that the First Circuit lays out. It's not provided for in the
15 contract. And respectfully, Your Honor, this Court should not
16 allow it.

17 THE COURT: Thank you, Mr. Qureshi.

18 MR. QURESHI: Thank you.

19 THE COURT: I'll now turn to counsel for the
20 Oversight Board.

21 MR. COOPER: Good morning, Your Honor. Scott Cooper
22 of Proskauer Rose, LLP, counsel for the Oversight Board as
23 representative of PREPA.

24 THE COURT: Good morning.

25 MR. COOPER: Your Honor, I think Mr. Qureshi has the

1 standard here backward. Each of the arguments, save the
2 development of the entry of the felony guilty pleas by Cobra's
3 former president and FEMA's former on-island representative,
4 is the only new event since the Court has previously ruled on
5 essentially every argument that Cobra has offered this
6 morning. And as your exchange with Cobra has already
7 reflected during this argument, the reasons for the
8 continuation of the stay are grounded primarily on the fact
9 that there is efficiency to be gained, and nothing essentially
10 from a legal standpoint to be lost, by allowing the FEMA
11 review of the second contract to continue and be completed
12 before the parties attempt to join the issue on whether there
13 are any -- after that process completes, any remaining issues
14 to be litigated in this Court regarding the amounts still
15 arguably due to Cobra. And for those reasons, the stay should
16 be continued.

17 We do not believe that the entry of the felony guilty
18 pleas in criminal actions are a sufficient basis, indeed any
19 justification, for a modification of the stay. And since no
20 other events have occurred that justify a change in the
21 Court's prior reasons for continuing the stay, we submit it
22 should be continued.

23 Cobra's attempt to portray the entry of the criminal
24 pleas as exonerating of Cobra and as sufficient basis for the
25 modification of the stay is inaccurate in our view. Indeed,

1 Cobra places more importance on the continuing relevance of
2 the criminal proceedings than the government parties did in
3 their objection. The status of the criminal proceeding has
4 not been the sole basis on which the Court has premised the
5 stay in the past, and we don't believe it is the primary basis
6 for the continuation of the stay now.

7 We also believe that Cobra's characterization of the
8 felony guilty pleas is not entirely accurate, but I think it's
9 unnecessary, unless the Court has an interest and -- in
10 understanding more of the details. I think it's all covered
11 in our papers. I won't go into detail about exactly what the
12 pleas were or about what the factual basis was. Suffice to
13 say that they establish, on a stipulated basis, that
14 Mr. Ellison and Ms. Tribble engaged in criminal conduct, at
15 least from April 2018 through December of 2018, the same time
16 period during which the second contract was being negotiated,
17 executed, and performed by Cobra. And while it is true that
18 the conduct that is being stipulated to was not directly
19 related to the second contract, it could be relevant to FEMA's
20 review of the second contract. But, more importantly, it
21 simply isn't a basis for the lifting of the stay.

22 Even Cobra admits the issues being addressed by the
23 FEMA contract review overlap substantially with what Cobra
24 asks the Court to address. FEMA is engaged in an extensive,
25 detailed analysis of Cobra's contractual entitlement to

1 payment based on a legal stand -- required under the
2 Bankruptcy Code. FEMA reviews the corporate invoices --

3 COURT REPORTER: I'm sorry, Counsel. Your Honor,
4 this is the court reporter. If counsel could please repeat?
5 The audio broke up from when he said "FEMA is engaged in an
6 extensive detailed analysis" --

7 THE COURT: Can you go back to that point, please,
8 Mr. Cooper?

9 MR. COOPER: Yes. Yes.

10 THE COURT: Thank you.

11 MR. COOPER: That FEMA is engaged in an extensive
12 detailed analysis of Cobra's entitlement to payment based on a
13 legal standard similar to the one required under the
14 Bankruptcy Code. FEMA reviews the Cobra invoices to determine
15 whether the costs were necessary and reasonable to accomplish
16 the work properly and efficiently, and whether the claimed
17 costs at issue were authorized under the contract pursuant to
18 which they were incurred or can be directly tied to the
19 performance of eligible work. Those are the standards
20 applicable to FEMA's review under federal regulations, and the
21 standards FEMA applied in its determination memorandum in its
22 review of corporate invoices under the first contract, and
23 will be the standards applied in its review under the second
24 contract.

25 That necessary and reasonable standard is very

1 similar to the actual and necessary standard under Bankruptcy
2 Code Section 503(b).

3 THE COURT: Mr. Cooper, how do you respond to
4 Mr. Qureshi's argument that the First Circuit's litigation
5 stay standard requires the Court to recognize and weigh
6 heavily the practical effect on Cobra's business of the delay,
7 even in determination as to whether the claim is allowed in
8 its commercial dealings? So Mr. Qureshi is saying Cobra
9 doesn't have the money, and that's a problem, but even if
10 Cobra can't be forced to -- can't enforce collection of the
11 money now, not even having an allowed claim affects it
12 materially in its commercial dealings.

13 MR. COOPER: I think the first thing I'd say about
14 that, Your Honor, is this is by no means the first time that
15 argument has been raised to the Court, and it has been
16 rejected in each of the instances in which it's been raised in
17 the past.

18 Second, I would say that under the factors that are
19 established in *Microfinacial, Inc., v. Premier Holidays*
20 *International, Inc.*, the First Circuit 2004 case that we've
21 previously cited to the Court, the relevant factors are the
22 hardship to PREPA, the interests of Cobra in proceeding
23 expeditiously, and the convenience of the Court.

24 I would submit that the -- the consensual advantage
25 to Cobra of having an adjudicated amount that would be due to

1 it at the time that the Title III proceeding is concluded does
2 not outweigh the very significant disadvantages that the Court
3 has already identified of duplicative litigation, potentially
4 inconsistent outcomes, and warrant the kind of proceeding that
5 Cobra proposes, again, and that the Court has previously
6 rejected, on the same arguments, be conducted on a
7 simultaneous basis.

8 It's not efficient. It's likely to cause the
9 litigation -- unnecessary litigation here of issues that
10 likely would be resolved if the FEMA review is completed
11 instead in the first instance, and that's really been proven,
12 Your Honor, by the outcome, as you've noted, of the first
13 contract review by FEMA. We're now down to just an appeal
14 process with respect to the last issues on that, and in --
15 those issues will be resolved before any issue could be
16 resolved in this Court on the first contract.

17 We submit the same outcome should occur with respect
18 to the second contract, and that the weighing of the benefits
19 and costs should result in the same outcome here. That is,
20 that the stay should be continued.

21 THE COURT: Thank you. Anything further?

22 MR. COOPER: Not from me, Your Honor.

23 THE COURT: Okay. Thank you.

24 Mr. Qureshi, you have two minutes for your further
25 response.

1 MR. QURESHI: Thank you, Your Honor.

2 So, Your Honor, the arguments that the Court just
3 heard about the similarity of whatever FEMA standard is being
4 applied to the review of the invoices with the administrative
5 claim standard might be interesting, Your Honor, but it is not
6 legally relevant. So let me come back to what is legally
7 relevant, which is the seven factor First Circuit test. And I
8 want to quickly tick through those factors, the first of which
9 is the interests of the plaintiff in proceeding expeditiously,
10 including the avoidance of prejudice should there be a delay.
11 There's been a three-year delay. I think we have more than
12 established the prejudice to Cobra of not even having an
13 allowed claim.

14 Second, hardship to the defendant. What you are
15 hearing, Your Honor, is that what PREPA wants is the benefit
16 of doing nothing while FEMA does whatever it is that FEMA
17 does. But, Your Honor, they didn't contract for that. We had
18 a negotiation. That negotiation resulted in a contract. That
19 contract gave PREPA one out, and one out only with respect to
20 FEMA, and that is, if they don't get FEMA money because of
21 Cobra's, quote, unquote, sole fault. That's not at issue. So
22 while it may be more convenient, and even less expensive for
23 PREPA, it's not legally relevant, Your Honor.

24 Third point, third factor, convenience of both the
25 civil and criminal courts, not relevant. Fourth factor, the

1 interest of third parties. I've already stated why every
2 third party in this proceeding would benefit from certainty of
3 having the claim go forward. Fifth factor, public interest.
4 Again, I've talked about the important public interest, the
5 underlying administrative priority, and why it even exists.
6 Sixth factor, good faith of the litigants, not at issue.
7 Seventh factor, status of the case. Again, weighs in favor of
8 doing this now --

9 (Sound played.)

10 MR. QURESHI: -- so we don't have another litigated
11 confirmation issue.

12 Your Honor, the interests of justice overwhelmingly
13 weigh in favor of lifting the stay. Thank you.

14 THE COURT: Thank you. I will now make my oral
15 ruling.

16 Pending before the Court is the Motion to Lift the
17 Stay Order, which is Docket Entry No. 21145 in Case No.
18 17-3283 and Docket Entry No. 2841 in Case No. 17-480, which
19 I'll refer to as the "Lift Stay Motion," filed by Cobra
20 Acquisitions, LLC, which I'll refer to as "Cobra", as we have
21 been doing.

22 The Court has reviewed the relevant pleadings
23 carefully and listened carefully to today's arguments. The
24 Court now makes its oral ruling as to the Lift Stay Motion,
25 and reserves the right to make non-substantive corrections in

1 the transcript of the ruling. For the following reasons, the
2 Lift Stay Motion is denied.

3 Cobra requests termination of the litigation stay
4 imposed by the Court in October of 2019 and continued since
5 that time so that the parties may litigate Cobra's
6 administrative expense motion, which is Docket Entry No. 8789
7 in Case No. 17-3283. The Court originally imposed the
8 litigation stay, which was requested by the government
9 parties, based on its conclusions that factual and legal
10 questions that could affect the outcome of the administrative
11 expense motion would likely be addressed in connection with
12 certain criminal proceedings against Cobra's former president,
13 and that the then pending FEMA investigation could also affect
14 the parties' rights and obligations with respect to the
15 amounts for which Cobra seeks administrative expense
16 treatment.

17 The power to stay proceedings is incidental to the
18 power inherent in every court to control the disposition of
19 the causes on its docket with economy of time and effort for
20 itself, for counsel, and for litigants, *Landis v. North*
21 *American Corporation*, 299 U.S. 248, 254, (1936).

22 As this Court noted in its order imposing the stay,
23 federal courts possess the inherent power to stay proceedings
24 for prudential reasons, and I refer you to Docket Entry No.
25 8886 in Case No. 17-3283, which was the first stay order.

1 That order quoted *Microfinancial, Inc., v. Premier Holidays*
2 *International, Inc.*, 385 F.3d 72, 77 (1st Cir. 2004).

3 It follows from these principles that after
4 imposition of a stay for prudential reasons, the Court retains
5 the ability to modify or dissolve the stay. *Green v. Cosby*,
6 177 F. Supp. 3d 673, 681 (D. Mass. 2016). Such circumstances
7 include material changes in the circumstances that the Court
8 originally determined warranted the stay.

9 Cobra contends that such material changes have
10 occurred. First, the criminal trial is no longer imminent,
11 because certain defendants have entered into plea agreements
12 with the prosecution, and the defendants, including Cobra's
13 former president, are now awaiting sentencing. Second, Cobra
14 characterizes the ongoing cost analysis and determination
15 awaited from the Federal Emergency Management Agency, or FEMA,
16 as incomplete, insofar as only the first of two contracts
17 between Cobra and PREPA has been reviewed and a determination
18 issued.

19 While Cobra acknowledges that an administrative
20 appeal of the determination concerning the first contract
21 remains ongoing, that administrative appeal does not appear to
22 be a material issue to either party, but Cobra, in any event,
23 asserts that further FEMA-related delay is unwarranted.
24 Specifically, Cobra argues that it will be unduly prejudiced
25 by continuation of the stay pending FEMA review of the second

1 contract and any related appeals, because the ultimate
2 resolution of the claim will require further litigation, and
3 more immediately, that the continuing financial uncertainty
4 for Cobra is harmful to its business interests.

5 The government parties argue that the outcome,
6 including sentencing of the criminal matter, may be relevant
7 to Cobra's entitlement to administrative expense treatment and
8 to payment, and they emphasize that the stay should remain in
9 place until a cost analysis and determination memo is issued
10 by FEMA concerning the entirety of the second contract,
11 asserting that the result of the memorandum concerning the
12 review of the first contract demonstrates the utility of such
13 FEMA scrutiny in that issues that might well have been
14 litigated in terms of contractual entitlement were essentially
15 mooted by the -- by FEMA's approval of expenses. So the
16 government argues that the FEMA cost analysis mitigates the
17 need for costly discovery and motion practice.

18 The Court has considered these arguments carefully.
19 This Court previously held that adjournment of the criminal
20 trial did not justify modification of the stay orders. See *In*
21 *re: Financial Oversight and Management Board for Puerto Rico*,
22 617 B.R. 173, 180, (D.P.R. 2020).

23 Here, the Plea Agreement shows substantial progress
24 toward a resolution, but there is still contentions that the
25 resolution may be significant to party positions in litigating

1 certain aspects of the motion. The Court, as it recognized in
2 its August 10th, 2021, order, must evaluate all aspects of the
3 current factual and procedural landscape in considering
4 whether the stay should be lifted or maintained. The FEMA
5 analysis of the first contract appears to have eliminated the
6 need for litigation of certain PREPA objections to Cobra's
7 costs under the first contract, and that review was
8 comprehensive.

9 The FEMA administrative review process allows for a
10 targeted investigation into potentially disputed expenses and
11 an avenue for administrative appeal for any adverse finding,
12 and so although FEMA is not a party to the contract, the FEMA
13 process, which turns on similar issues as Bankruptcy Code and
14 contractual entitlement to payment of Cobra, is one that
15 reduces the need for extensive litigation and discovery
16 proceedings to resolve disputes regarding the amounts billed,
17 and is an important factor in conserving court resources and
18 the resources of the parties.

19 The Court understands that the plaintiff, Cobra --
20 well, the movant, Cobra, has an interest in expeditious
21 determination of its ultimate entitlement to payment of its
22 invoices. That is an important consideration. It is not a
23 determinative consideration.

24 PREPA here and the Court would face what would be
25 potentially and probably unnecessary use of resources, and

1 potentially conflicting outcomes if the entitlements to
2 payment under the second contract were litigated prior to the
3 FEMA determination, and the public interest in this particular
4 setting of a Title III bankruptcy is one that the public
5 entity defendant has presumably also weighed in determination
6 as to the risks and benefits of expending public resources on
7 potentially unnecessary and potentially duplicative litigation
8 of this particular claim.

9 The Court finds that the delay of determination
10 outcome here is not clearly inconsistent with the public
11 interest in the context of this particular controversy, and
12 the Court also notes that the prejudice being suffered by
13 Cobra isn't materially different from that of others who are
14 awaiting payments of administrative expense claims.

15 Accordingly, the Court will enter an appropriate
16 order denying the motion, and the parties are directed to file
17 a further status report by January 6th, 2023, or, if earlier,
18 30 days following the issuance of a FEMA determination
19 concerning the second contract.

20 Thank you. Thank you, Counsel, for your arguments
21 and submissions.

22 MR. COOPER: Thank you, Your Honor.

23 THE COURT: The final contested matter is No. 4 on
24 the agenda, the PV Properties Motion for Relief from Stay,
25 which is Docket Entry No. 2779 in Case No. 17-4780, and I have

1 counsel for the movant, PV Properties, down for opening
2 remarks of four minutes.

3 Would counsel for PV Properties please turn on your
4 camera and your microphone?

5 MR. AGRAIT: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Agrait.

7 MR. AGRAIT: For PV Properties, Attorney Fernando
8 Agrait.

9 Your Honor, we are here today because 12 years ago,
10 2010, a new asset was created by the government of Puerto
11 Rico. The asset was the RECs -- renewable energy
12 certificates, and it is --

13 COURT REPORTER: I'm sorry, Counsel. This is the
14 court reporter. If you could repeat? The audio broke off.
15 "The asset was the" -- it broke off.

16 MR. AGRAIT: The renewable energy certificate.

17 THE COURT: So that's renewable energy certificate,
18 which you are referring to as the REC, R-E-C; is that correct?

19 MR. AGRAIT: An asset. Yes.

20 THE COURT: The RECs are an asset. Thank you.

21 Did you get that, madam court reporter?

22 COURT REPORTER: Yes, Your Honor. Thank you.

23 THE COURT: Thank you.

24 Please continue, Mr. Agrait.

25 MR. AGRAIT: The asset was created as an instrument

1 of public policy to increase the investment, financing, and
2 promotion of renewable energy providers by the private sector.
3 The RECs' asset value depends both on the market and/or
4 specific private negotiations between parties, or with PREPA.
5 That -- and the reason and the key for the RECs' value is that
6 PREPA, a public monopoly, must comply with Puerto Rico law,
7 with the renewable portfolio standard, meaning a certain
8 amount of renewable energy has to be part of its portfolio of
9 production.

10 The only way that PREPA can comply with the RPS is
11 either by self production, that they don't have capacity as a
12 matter of fact, by buying renewable energy and RECs from
13 private producers, that there are not enough in Puerto Rico to
14 provide what they need for the RPS, or by buying RECs.

15 What is happening is that PREPA is notifying the
16 public agency, which is the PREB, on its compliance with the
17 renewable portfolio standard and its actions. The RECs, that
18 is acquired from people, entities that have PPOAs with PREPA,
19 but it's also adding the renewable energy production of
20 private consumers who have --

21 (Sound played.)

22 MR. AGRAIT: -- net metering programs with PREPA.
23 And none of the RECs of the net metering consumers are
24 acquired by PREPA. The net effect is that if PREPA can comply
25 with the RPS by using renewable energy that it has not

1 acquired, the RECs, like it is informing now the PREB, the end
2 result is the RECs lose all their value. It just disappears,
3 because, as I mentioned, the reason for the value of the RECs
4 is that PREPA must comply and must buy in order to add their
5 own self-production, or PPOA acquired RECs.

6 THE COURT: Mr. Agrait, in my June 17th order, I
7 directed the parties to provide specific citations to language
8 in the reports to PREB that show that PREPA is, in fact,
9 claiming that it is in compliance with the RPS, but the
10 documents that we have here seem to indicate that PREPA is not
11 claiming that it's in compliance. It's reporting
12 substantially lower amounts than would be required to meet the
13 RPS target.

14 So what is your -- what's the basis of your claim
15 that PREPA is saying that it's in compliance?

16 MR. AGRAIT: I might have made a mistake in an
17 expression of mine, saying that they are claiming that they
18 are in compliance. They have to file the reports in order to
19 show the PREB, Puerto Rico Energy Bureau, whether they are in
20 compliance or not, and there they present as amount of
21 renewable energy to be taken into account for their
22 compliance, both PPOAs, RECs, and energy by the -- the super
23 energy consumers with net metering programs that they don't
24 acquire the RECs, and the RECs are not paid to these
25 consumers. So the total they are presenting, even the very

1 low total they are presenting, includes energy produced by
2 private consumers where they have not acquired the RECs.

3 So they -- noncompliance is worse than what they
4 report, and they have a legal obligation to comply. Whether
5 it's the Puerto Rico Energy Bureau or some other entity that
6 has to impose sanctions on them for not doing so, but the fact
7 is that they are including, as information of renewable energy
8 to be taken into account for compliance, energy from the civil
9 generators that -- generators that have not -- that they
10 haven't purchased the RECs.

11 THE COURT: Now, there are other renewable energy
12 suppliers in Puerto Rico. Is there any reason why the RECs
13 would have to have been bought from PV Properties in
14 particular?

15 MR. AGRAIT: Well, two things. One, there are not
16 enough producers of renewable energy in Puerto Rico, PPOAs, to
17 comply with PREPA'S RPS obligations under the law. That's
18 one. So in order to move toward compliance, they must buy all
19 the RECs available from PPOA contracts, and buy PPOA RECs from
20 private producers, like the case of the net metering
21 consumers. That's one. And, two -- and PV Properties have
22 production of renewable energy with net metering contracts for
23 the RECs. We are actually doing that and not receiving -- not
24 being bought on the RECs. That is the main reason. And, two,
25 whether other parties claim their rights to this Court, well,

1 it's their decision. We are claiming ours.

2 We are not here in a class action representing all
3 the PPOA producers or all the consumers with net metering
4 programs. We're just requesting our rights, where we have an
5 asset that value collapses to zero when PREPA claims that it's
6 moving to compliance with energy -- renewable energy portfolio
7 standard without acquiring the RECs.

8 THE COURT: And what -- even if you are correct that
9 PREPA's actions that you have described would support
10 nondischargeable takings claims, what harm would you suffer if
11 the Court does not grant immediate stay relief? Can't the
12 dischargeability arguments be addressed equally well later in
13 connection with a claim or plan confirmation proceedings?

14 MR. AGRAIT: Yes, Your Honor, I think that our claims
15 could be taken care of later in -- in the bankruptcy
16 proceedings, yes.

17 THE COURT: Do you have any specific response to the
18 Oversight Board's analysis of the *Sonnax* factors, in which the
19 Oversight Board argues that those factors do not indicate a
20 need for immediate stay relief?

21 MR. AGRAIT: Well, Your Honor, I think that certainly
22 there is a harm to PREPA -- or to the movant here of not
23 having the value of its assets protected and paid for. And
24 there is no -- I don't think that PREPA can argue that it
25 suffers a harm, because it has to comply with the law. I

1 mean, PREPA, it's a public entity, and it can only act within
2 the framework of the law that it operates. And arguing that
3 they would be harmed by complying with the law makes no sense
4 in a public entity.

5 So I think that the -- the balance, the *Sonnax*
6 factors would go in favor of raising the --

7 COURT REPORTER: I'm sorry, Counsel.

8 THE COURT: Thank you. I'm sorry.

9 COURT REPORTER: Your Honor, I'm sorry. This is the
10 court reporter. If counsel could repeat the very last part of
11 his sentence? It dropped off, the audio --

12 THE COURT: So, Mr. Agrait, would you repeat your
13 last point there?

14 MR. AGRAIT: Instead of concerning the harm to PREPA,
15 to the debtor, I don't think it's reasonable for PREPA to say
16 that it will suffer harm because it has to comply with the
17 law. PREPA is a public entity, and all its actions must
18 comply with the law. There's no space outside of the law.
19 The law created it, and -- the structure and framework of
20 renewable energy that the Government of Puerto Rico created by
21 law.

22 So, in the balance, the harm suffered by PV versus
23 the harm, quote, unquote, suffered by PREPA remains in favor
24 of PV.

25 THE COURT: Madam court reporter, were you able to

1 get that this time?

2 COURT REPORTER: Yes, Your Honor. Thank you.

3 THE COURT: Thank you.

4 So now I will turn to counsel for the Oversight
5 Board, Mr. Desatnik. Good morning.

6 MR. DESATNIK: Good morning, Your Honor. Daniel
7 Desatnik, Proskauer Rose, LLP, for the Oversight Board, as
8 Title III representative of PREPA.

9 THE COURT: Good morning.

10 MR. DESATNIK: Your Honor, this is movant's third
11 attempt to lift the stay to compel PREPA to buy its RECs. The
12 Court denied movant's prior two attempts for failure to show
13 cause on *Sonnax* factors grounds. That is the legally relevant
14 test.

15 As Your Honor just asked movant, what is the harm
16 from adjudicating your claim in the claims administration
17 process like everyone else? I don't want to overstate what
18 movant said, but I believe he just told the Court there is no
19 harm, there is no reason why movant cannot adjudicate its
20 claim, if it believes it's a takings claim and is not
21 dischargeable. PREPA obviously disagrees, but that's really
22 the crux of the issue, and we believe that that is dispositive
23 of the motion.

24 The Court denied movant's past two lift stays on
25 *Sonnax* factors grounds, and we believe its reasoning in those

1 two motions -- in the denial of those two motions is equally
2 applicable here. Movant did say that PREPA would not be
3 harmed by lifting the stay. We disagree for much of the same
4 reasons that the Court just articulated in the Cobra stay
5 motion.

6 As the Court is well aware, PREPA is in the midst of
7 global mediation with key stakeholders. The Court just
8 declined an invitation from some of those mediation parties to
9 proceed with litigation while mediation is ongoing. The Court
10 also just recognized that maintaining the stay is in the
11 public interest, because it weighs in favor of not potentially
12 engaging in unnecessary litigation.

13 Judge, we don't believe that PREPA should have to
14 divert its limited resources at this critical juncture to
15 engage in litigation, particularly litigation on a claim that
16 is not commenced. Your Honor, because Your Honor asked for
17 supplemental briefing, even though we maintain that the merits
18 of the underlying claim here are not relevant on a lift stay
19 motion, all that is relevant is whether movant has shown cause
20 to lift the stay, and they have not, I do want to briefly
21 address some of the factual contentions of movant's motion.

22 Movant's takings claim is entirely built on its
23 contention that PREPA has reported to PREB that it owns
24 movant's RECs in order to comply with the RPS. Based on my
25 review of the client's reports and my discussions with PREPA's

1 counsel, that simply is not the case.

2 As shown in the joint status report that we
3 submitted, PREPA does not take credit for RECs from
4 distributed generation providers such as PV Properties.
5 Movant actually concedes as much in the joint status report,
6 saying that there's nowhere in the report that it expressly
7 takes credit. It further does not explain how those reports
8 take credit for those RECs by implication.

9 Second, Judge, as you yourself noted, PREPA is not
10 claiming compliance with the RPS. Unfortunately, PREPA is
11 quite far from compliance. My understanding is, in its latest
12 report, it is only 3.7 percent of the way to the 20 percent
13 compliance threshold, and that, again, it is my understanding,
14 is a bright-line requirement. It doesn't matter if PREPA is
15 3.7 percent or maybe 3.8 percent, because now it has movant's
16 RECs. If it fails to meet that 20 percent threshold, PREB
17 issues a noncompliance notice, and then PREPA must show that
18 noncompliance was excusable for one of seven reasons.

19 If PREPA's able to meet that standard, there's really
20 no benefit to PREPA from not complying or punishment to PREPA,
21 and so there's really no prejudice to movant here from not
22 engaging in the sale of the RECs at this moment in time.

23 Third, Judge, for the same reason, this motion is
24 premature because PREB has yet to regulate the market for
25 RECs. We cover this extensively in our brief, but PREB needs

1 to set the minimum price for RECs, and PREPA has determined
2 that it cannot engage in the purchase of RECs from distributed
3 generation providers such as PV Properties until that has been
4 done.

5 Movant actually quotes a letter that PREPA sent to
6 Windmar, which is an affiliate of PV Properties, in which
7 PREPA says, once PREB has passed those regulations, PREPA will
8 engage with it in potentially buying its RECs. And given that
9 PREPA is so far from its compliance standards, there is a
10 likelihood here that that conversation will need to take
11 place. So going back to the Court's observation in the Cobra
12 matter, that we want to avoid unnecessary litigation, this
13 could be rendered unnecessary as well in due time.

14 Finally, Judge, for the same reason, you know, even
15 if the factual contentions were true, and my view is that they
16 are not, there's no per se taking of property here.

17 (Sound played.)

18 MR. DESATNIK: Movant retains title to its RECs.
19 It's free to sell or trade them once the regulations have been
20 passed by PREB. There's also no regulatory taking against
21 PREPA, because PREB is the relevant regulator, and PREPA has
22 not passed any regulation that would deprive movant of the
23 value of its RECs.

24 So unless Your Honor has any questions, we
25 respectfully submit that the Court should deny the Lift Stay

1 Motion. Thank you.

2 THE COURT: Thank you, Mr. Desatnik.

3 Anything further, Mr. Agrait?

4 MR. AGRAIT: Yes. Very short.

5 First, the Law 17 of 2019, which is the public policy
6 in Puerto Rico --

7 THE COURT: I'm sorry. After -- would you go back
8 and repeat what you said after the reference to Law 17 of
9 2019? The sound didn't come through.

10 MR. AGRAIT: The Law 17, Law 17 of 2019 is Puerto
11 Rico's public policy, Your Honor. It specifically states that
12 the obligations of the government parties is not subject, nor
13 limited, nor can be pro -- pending on the regulations are
14 approved. Such is the law, and that law applies to PREPA. So
15 PREPA saying that they don't have to act because there's no
16 regulations is simply against the law and is incorrect.
17 That's my -- two --

18 COURT REPORTER: I'm sorry, Counsel. This is the
19 court reporter. Against the law and -- I didn't hear the last
20 part --

21 MR. AGRAIT: And incorrect. And incorrect. So if
22 PREPA reports to the PREB only the RECs they have acquired
23 from PPOA contracts, which they do in their report, and don't
24 add to those numbers the energy -- renewable energy produced
25 by consumers who have not been paid for the RECs, then there

1 would be no problem.

2 The issue here, different from the prior cases that
3 PV Properties and Windmar brought to this Court concerning the
4 RECs, is that we are arguing that by reporting to the PREB the
5 value -- the value of the energy that they don't pay for the
6 RECs, they are, one, misleading a government agency and
7 submitting wrong information; and, two, the net effect is to
8 eliminate the value of the RECs, because the RECs have value
9 only when PREPA has to buy them in order to comply with the
10 RPS.

11 That will be all, Your Honor.

12 THE COURT: Thank you, Mr. Agrait, and thank you
13 also, Mr. Desatnik, for your arguments. I will now make my
14 ruling.

15 Before the Court is PV Properties, Inc.'s, Motion for
16 Relief from the Automatic Stay, which is Docket Entry No. 2779
17 in Case No. 17-4780. I'll refer to that as the "Motion". The
18 Court has carefully reviewed the relevant pleadings, and
19 listened to the arguments today. The Court now makes its oral
20 ruling as to the Motion, and reserves the right to make
21 nonsubstantive corrections in the transcript of this ruling.

22 For the reasons that follow, the Court denies the
23 motion to the extent that the automatic stay bars the
24 prosecution of the movant's claims. This reminds me that
25 there is a question that I had intended to put to

1 Mr. Desatnik, and so I'm going to ask Mr. Desatnik to return
2 to camera for a moment.

3 Mr. Desatnik, is it the Oversight -- is it PREPA's
4 position that the automatic stay bars PV Properties from
5 seeking relief with respect to post-petition RECs, and, if so,
6 on what aspect of Section 362 is that position premised?

7 MR. DESATNIK: Yes, Your Honor. I don't want to
8 overstate the Board's position on the automatic stay, but from
9 my analysis, 362(a)(3) stays any act to obtain possession of
10 property of the estate, or property from the estate, or to
11 exercise control over property of the estate.

12 As the Court is aware, under PROMESA 301, property of
13 the estate is substituted for property of the debtor. So if
14 PV Properties is trying to commence an action against PREPA to
15 collect on a judgment against PREPA, at this point in time,
16 they are committing an act to exercise control over PREPA's
17 property, meaning its funds.

18 So we do believe, or at least, you know, my analysis
19 -- and I don't want to overcommit the Board's position on this
20 -- is that the stay would apply here to the post-petition
21 RECs. But I also do want to say that I'm not sure if the
22 post-petition/pre-petition lens is correct here, because this
23 is just the same continuation of PV Properties' claims that
24 existed pre-petition. They're saying that they have RECs.
25 They're saying that, Puerto Rico law compiles us to buy those

1 RECs -- compels PREPA to buy those RECs. And now it's just a
2 change of theory. Now they're saying that the Court's decided
3 Puerto Rico law does not require us to buy those RECs. Now
4 it's a takings claim.

5 So I do think that this is just a different theory of
6 a pre-petition claim, but even to the extent there might be
7 some post-petition element, the stay would still apply.

8 THE COURT: But there is no judgment that they're
9 trying to collect now. What they're talking about is
10 instituting an inverse condemnation action that would result
11 in the first instance in a determination as to whether there
12 is liability. Is that correct?

13 MR. DESATNIK: Well, they say that in their motion,
14 Your Honor, but the order that they proposed does not have
15 such qualification, so it's unclear to us if this is just a
16 quantification, or if it's to seek a judgment.

17 I would, you know, still take the position that even
18 a quantification that seeks to reserve a portion of PREPA's
19 property for it is still an act to control PREPA's property,
20 but, nevertheless, if the stay does apply, if they're just
21 seeking quantification purposes of their claim, there's no
22 reason that it can't be done in the claims administration
23 process.

24 THE COURT: Thank you, Mr. Desatnik.

25 So now I will go on with my ruling. For the reasons

1 that follow, the Court denies the Motion to the extent that
2 the automatic stay bars the prosecution of the movant's
3 claims. To determine whether cause exists to lift the
4 automatic stay, the Court analyzes the factors set out by the
5 Second Circuit in *Sonnax Industries v. Tri Component Products,*
6 *Corp.*, in the *In re: Sonnax Industries* bankruptcy case, 907
7 F.2d 1280, 1286 (2nd Cir. 1990). See *Gracia-Gracia v.*
8 *Financial Oversight and Management Board for Puerto Rico* in
9 the *In re: Financial Oversight and Management Board for Puerto*
10 *Rico*, Title III case, 939 F.3d 340, 347 (1st Cir. 2019).

11 The following factors identified in *Sonnax* are
12 particularly relevant to this controversy: Whether relief
13 would result in a partial or complete resolution of the
14 issues. That is the first factor. Connection with or
15 interference with the bankruptcy case. That is the second
16 factor. The interest of judicial economy, and the expeditious
17 and economical resolution of litigation. That is the 10th
18 factor. Whether the parties are ready for trial. That is the
19 11th factor. And the impact of the stay on the parties and
20 the balance of harms, which is the 12th factor.

21 The party requesting stay relief bears the initial
22 burden of establishing prima facie eligibility for stay
23 relief, after which the debtor has the ultimate burden of
24 persuasion on all issues other than the debtor's equity in
25 property, and I cite for that the *Gracia-Gracia* decision,

1 which quoted *Sonnax*.

2 The first factor does not weigh in favor of lifting
3 the automatic stay. Granting the motion and providing relief
4 from the automatic stay so that PV Properties can commence an
5 inverse condemnation proceeding against PREPA would not result
6 in the resolution of issues that will speed the resolution of
7 PREPA's Title III case. While PV Properties would like its
8 claims to be adjudicated by a court sooner rather than later,
9 that is no doubt true of many creditors who would like their
10 claims to be resolved and paid as soon as possible.

11 The fact that PV Properties has cast its claims as
12 arising under the Takings Clause does not make their immediate
13 resolution more pressing. As the Court has previously held,
14 granting stay relief simply because a movant has asserted
15 constitutionally protected rights would invite unsecured
16 creditors to seek to challenge in alternative fora the
17 validity of any government act that they contend has affected
18 their rights by simply recasting their claim in constitutional
19 terms, thereby disrupting significantly and undermining the
20 fundamental purpose of these Title III proceedings. *In re:*
21 *Financial Oversight and Management Board for Puerto Rico*, 485
22 F. Supp. 3d 351, 362 (D.P.R. 2020), affirmed 989 F.3d 170,
23 (1st Cir. 2021).

24 Moreover, even if PV Properties' claims have merit,
25 so do many creditors' claims. If the mere existence of

meritorious claims constituted cause for relief from the automatic stay, the automatic stay would cease to provide the breathing spell that is critical to debtors' rehabilitation. *In re: Oversight -- Financial Oversight and Management Board for Puerto Rico*, Case No. 17-3283, reported at 2019 Westlaw 4735362, at *4, (D.P.R. June 28th, 2019).

Granting stay relief would, however, divert PREPA's resources and attention during a period when its employees and advisors are focused on the critical task of negotiating and formulating a plan of adjustment with the aid of the mediation team. Permitting PV Properties to circumvent the orderly claims resolution process and distract from efforts to formulate a plan for the benefit of all stakeholders is potentially prejudicial to other interested parties, and is not an efficient use of the debtors' resources. Thus, the second factor also weighs against stay relief. Nor do factors ten and 11 support stay relief. The inverse condemnation proceeding contemplated by PV Properties has not even been commenced, and, therefore, is not ready for trial.

Accordingly, the Court is not inclined to require PREPA to take on the significant transaction costs of trying to untangle the factual and legal basis for PV Properties' claims, and to respond to them in another judicial forum at this time. For these reasons, the Court will enter an order denying the motion.

1 Thank you, Counsel, for your arguments and your
2 appearance today. This concludes the matter.

3 MR. AGRAIT: Thank you, Your Honor.

4 THE COURT: Mr. Agrait? I'm sorry, Mr. Agrait. Did
5 you want to --

6 MR. AGRAIT: I just said thank you, Your Honor.

7 THE COURT: Thank you. Take care.

8 So this concludes the scheduled agenda matters. If
9 counsel need to raise anything else before I adjourn, please
10 raise your hand on the screen.

11 I do not see any hands raised, so this concludes the
12 hearing agenda for this Omnibus Hearing. The next scheduled
13 hearing is the August 8th, 2022, pretrial conference in
14 connection with the proposed Plan of Adjustment for the Puerto
15 Rico Highways and Transportation Authority. As with today's
16 hearing, that hearing will occur over a combination of Zoom
17 and a listen-only telephone line.

18 The Court previously entered an Order adjourning the
19 August 10th Omnibus Hearing, so that Omnibus Hearing is now
20 scheduled to be held in conjunction with the Confirmation
21 Hearing to be held the following week on August 17th and 18th,
22 2022. I expect to conduct the August 17th and 18th hearings
23 in San Juan, conditions permitting.

24 As always, I thank our court staff in Puerto Rico, in
25 Boston, and in New York for their work in managing today's

1 proceedings, and their ongoing work in managing and
2 administering these very complex proceedings under
3 circumstances that continue to be challenging. Stay safe and
4 keep well everyone. We are now adjourned.

5 (At 11:12 AM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 61 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 June 29, 2022.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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